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No. 02-241

IN THE

Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, JEFFREY LEHMAN, DENNIS SHIELDS, and the BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR GRADUATE MANAGEMENT ADMISSION COUNCIL AND THE EXECUTIVE LEADERSHIP COUNCIL AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

This brief addresses only the first of the two questions for which the Court granted the Petition for Writ of Certiorari; namely, whether the University of Michigan Law School's use of racial preferences in student admissions violates the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), or 42 U.S.C. § 1981.

INTEREST OF *AMICI CURIAE*[1]

The Graduate Management Admission Council ("GMAC") and the Executive Leadership Council ("ELC") respectfully submit this brief as *amici curiae* in support of Respondents and urge affirmance of the case below.

GMAC was formed in the 1970's as a non-profit support organization for business schools. It currently has more than 135 university business school members, and provides programs and services that are used by more than 1,700 graduate business programs around the world. Among other things, GMAC conducts educational research, provides information to prospective students about business and management education, and develops and administers the Graduate Management Admission Test ("GMAT"). The GMAT test is used by counselors and admission officers as one predictor of academic performance in graduate management schools. GMAC is committed to promoting the highest standards of professional business practices and to creating broad access to graduate management education.

GMAC and its member schools strongly believe that a diverse workforce is critical to the continuing success of American business enterprises. Accordingly, GMAC has undertaken several diversity initiatives, including "Destination MBA," "The PhD Project," and the "Diversity Pipeline Alliance." *See generally* "Diversity Initiatives," *at* http://www.gmac.com/gmac/SchoolServices/MarketingManagementEducation/DiversityInitiatives.htm. Through these

1. The following representations are made pursuant to Sup. Ct. R. 37: The undersigned counsel hereby confirms that they wholly authored this brief and that no person or entity other than the named *amici* has made any monetary contribution to the brief's preparation or submission. Written consent of the parties to allow all interested *amici* to file briefs in this case are on file with the Court.

initiatives, GMAC strives to increase the diversity of individuals who are seeking MBA or business doctorate degrees. GMAC's goal is to make graduate business education and degrees more available to historically underrepresented groups.

A recent report by GMAC's Diversity Pipeline Alliance noted the positive impact of racial diversity in education and business:

- Educating minority group members benefits the economy as a whole by significantly raising the earning power of minorities, thereby increasing national wealth.
- Education in a diverse environment enhances on-the-job creativity, innovation, and problem-solving skills.
- Employees who are exposed to people from different backgrounds are more likely to understand issues from different points of view.
- Employees from different racial and ethnic backgrounds can enhance the development of products and services for today's diverse marketplace.
- Financial markets reward corporate diversity.

The Pipeline Report (Diversity Pipeline Alliance, McLean, VA), 2002, at 5, *available at* http://www.diversitypipeline.org/pipeline_report.pdf (citing Business Higher Education Forum, *Investing in People: Developing All of America's Talent on Campus and in the Workplace*, Washington, D.C., 2001). Based on these findings and others, GMAC strongly believes that there is a compelling need to increase the diversity of business school classes.

The Executive Leadership Council is a non-profit organization comprised of the most senior African American corporate executives in Fortune 500 companies. The average ELC member has worked in corporate America for 23 years and is responsible for more than 1,500 employees. Of the four African American CEO's currently leading Fortune 500 companies, two are ELC members and the other two are strong ELC program supporters. They join a network of senior vice presidents, chief financial officers, and other executives that make up ELC's 300 members, many of whom report directly to the CEO. ELC members represent some 200 Fortune 500 companies.

Most ELC members are beneficiaries of affirmative action. Without affirmative action, many would not be where they are today. Affirmative action provided educational access, corporate leadership development, and mentoring that created the pipeline for ELC members to enter corporate America and to excel. While each member succeeded on the strength of his or her own merit, many of the opportunities to succeed came from affirmative action access programs and individuals who acted affirmatively to transform institutions that traditionally excluded underrepresented minorities.

ELC members not only make major contributions to the business world, they also frequently serve on non-profit boards and in public service appointments, and they make substantial contributions of their time and money to the communities in which they live and work. As a result, ELC members serve as role models and mentors for young African Americans, in particular, and the Nation as a whole.

Since its founding in 1986, ELC has created numerous programs to help ensure a continuous pipeline of young African Americans into corporate America. These programs include:

- *The National Business Commentary Essay Competition* co-sponsored by the Coca-Cola Company.
- *The Business Case Competition* co-sponsored by Goldman Sachs and Co.
- *The Mid-Level Managers' Symposium* co-sponsored by PepsiCo, and the *Regional MLM Symposium* co-sponsored by Sears, Roebuck and Co.
- *The Technology Transfer Project* (TTP) co-sponsored by Oracle, Williams, the Coca-Cola Company, Booz, Allen & Hamilton, DaimlerChrysler and other companies, all of which invested more than $7 million in technical and human resources into 12 Historically Black Colleges and Universities. TTP addresses digital-divide problems related to faculty training, curriculum development, campus technology infrastructure, and instructional information for higher education CIO's.
- *The CEO Summit* co-sponsored by General Electric.
- *The Annual Recognition Dinner* which has been co-sponsored by numerous Fortune 500 companies.

From the personal experience of its members and the results achieved by its own initiatives, ELC knows firsthand that affirmative action programs in higher education serve the

compelling state interest of providing the necessary pipeline of graduates to ensure a diverse workforce.

ARGUMENT

Despite efforts by GMAC, ELC and others to promote diversity, the number of underrepresented minority[2] students in MBA and other graduate programs remains deplorably low and does not remotely reflect the composition of American society as a whole. The underrepresentation of minority students in business school and other graduate schools means an equally troubling underrepresentation of minorities in leadership positions in the American workplace, and a cadre of graduates who are less capable of functioning effectively in an increasingly diverse – and global – economy. If graduate schools cannot consider race or ethnicity as one factor among many in the admissions process, the goal of achieving reasonable diversity in all levels of the American workforce will be substantially undermined.

GMAC's and ELC's arguments in support of the respondents are already well stated in the Brief for *Amici Curiae* Leading American Businesses in Support of Respondents. Therefore, to avoid duplicative briefing, GMAC and ELC adopt those arguments by reference, and urge the Court to uphold the University of Michigan Law School's admission policy. The policy is narrowly tailored to serve the compelling state interest of promoting diversity in education.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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2. For the purposes of this brief, the term "underrepresented minorities" refers to African Americans, Hispanic Americans, and Native Americans.

Respectfully submitted,

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